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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2010-0604-201160; FRL-9496-3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Atlanta; Determination of Attaining Data for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Atlanta, Georgia, fine particulate (PM_{2.5}) nonattainment area (hereafter referred to as the “Atlanta Area” or “Area”) has attained the 1997 annual average PM_{2.5} national ambient air quality standards (NAAQS) and, additionally, that the Area has attained the 1997 annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entirety, and portions of Heard and Putnam Counties. First, the determination that the Atlanta Area has attained the 1997 annual PM_{2.5} NAAQS is based on upon quality-assured and certified ambient air monitoring data for the 2008 - 2010 period showing that the Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to

attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual PM_{2.5} NAAQS. Second, the determination that the Atlanta Area has attained the 1997 PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010, is based upon quality-assured and certified ambient air monitoring data for the 2007 - 2009 period showing that the Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS during that period. Additionally, in this action EPA is addressing a typographical error found in the proposed approval for these actions.

EFFECTIVE DATE: This final rule is effective on [insert date 30 days after publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2010-0604. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: Madolyn Dominy, Regulatory Development

Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Dominy may be reached by phone at (404) 562-9644 or via electronic mail at dominy.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Taking?

II. What is the Effect of this Action?

III. What is EPA's Final Action?

IV. What are the Statutory and Executive Order Reviews?

I. What Actions is EPA Taking?

EPA is determining that the Atlanta Area (comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties) has attained the 1997 annual PM_{2.5} NAAQS. This determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS based on the 2008 - 2010 data. Preliminary monitoring data for the 2009-2011 period indicates that this area is continuing to attain the 1997 annual PM_{2.5} NAAQS. EPA is also determining, in accordance with EPA's PM_{2.5} Implementation Rule of April 25, 2007 (72 FR 20664), that the Atlanta Area has attained the 1997 annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010.

Other specific requirements of the determinations and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on September 14, 2011 (76 FR 56701) and will not be restated here. The comment period closed on October 14, 2011. No comments, adverse or otherwise, were received in response to the NPR.

Finally, EPA also found a typographical error in the NPR. On page 56702 of the NPR, EPA stated "On November 13, 2009, EPA designated the Atlanta Area as nonattainment for the 2006 24-hour NAAQS (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Atlanta Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour NAAQS." In EPA's November 13, 2009, action to designate areas for the 2006 24-hour NAAQS, EPA actually designated the Atlanta Area as attainment/unclassifiable for the 2006 24-hour NAAQS. *See* 74 FR 58688.

Additionally, EPA is taking the opportunity through this action to clarify that that only a portion of Heard and Putnam Counties are included in the 1997 annual PM_{2.5} nonattainment area for Atlanta.

II. What are the Effects of These Actions?

The determination of attaining data action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual PM_{2.5} NAAQS as long as this Area continues to meet the 1997 annual PM_{2.5} NAAQS. Finalizing this action does not constitute a redesignation of the Atlanta Area to attainment for the 1997 annual PM_{2.5} NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required

under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

In addition, EPA is making a separate and independent determination that the Area has attained the 1997 annual PM_{2.5} standard by its applicable attainment date (April 5, 2010), thereby satisfying EPA's requirement pursuant to section 179(c)(1) of the CAA to make such determination based on the Area's air quality data as of the attainment date.

III. What are EPA's Final Actions?

EPA is determining that the Atlanta Area has data indicating it has attained the 1997 annual PM_{2.5} NAAQS and, additionally, that the Area has attained the standard by its applicable attainment date (April 5, 2010). These determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual PM_{2.5} NAAQS during the periods of 2008 – 2010, and 2007 – 2009. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual PM_{2.5} NAAQS as long as the Area continues to meet the 1997 annual PM_{2.5} NAAQS. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

Further, EPA is correcting a typographical error in EPA's proposed approval for these actions where EPA stated that the Atlanta Area was previously designated nonattainment for the 2006 PM_{2.5} NAAQS. EPA has determined that the correction in today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act which,

upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this correction is unnecessary because it is merely to correct a typographical error where EPA stated that in a previous action that the Atlanta Area was designated nonattainment for the 2006 PM_{2.5} NAAQS, whereas the Area was actually designated as attainment/unclassifiable for the 2006 PM_{2.5} NAAQS. This correction has no substantive impact on EPA’s September 14, 2011, proposed action. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the determinations of attainment for the Atlanta Area.

IV. What are Statutory and Executive Order Reviews?

Under the CAA, the Administrator is required to approve a SIP submission or state request that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions or state request, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the impacted area is not in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business

Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the determination of attaining data for the 2006 24-hour fine particulate matter standard for the Atlanta Area, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 10, 2011

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart L – Georgia

2. Section 52.578 is amended by adding paragraph (e) to read as follows:

§ 52.578 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(e) Determination of Attaining Data. EPA has determined, as of April 5, 2011, the Atlanta, Georgia, nonattainment area has attaining data for the 1997 annual PM_{2.5} NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual PM_{2.5} NAAQS.

[FR Doc. 2011-30364 Filed 12/07/2011 at 8:45 am; Publication Date: 12/08/2011]